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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 280

SAM BLOCK, LEWIS BLOCK and RAYMOND BLOCK, a co-partnership, d/b/a BLOCK REALTY COMPANY, FAUSETT AND COMPANY, an Arkansas Corporation, and WALTHOUR-FLAKE COMPANY, an Arkansas Corporation ..... *Petitioners*

v.

BAR ASSOCIATION OF ARKANSAS, by EUGENE A. MATTHEWS and H. MAURICE MITCHELL, Acting President and Secretary-Treasurer thereof, and individually as licensed attorneys at law of the Arkansas Bar; TERRELL MARSHALL, THOMAS E. SPARKS, COOPER JACOWAY, JOHN H. JONES, FRANK J. WILLS, BILL PENIX, JOHN T. JERNIGAN, W. H. DUNBLASIER and OSBORNE W. GARVIN, as Members of the Committee of the Bar Association of Arkansas on Unauthorized Practice of Law, and individually as licensed attorneys at law of the Arkansas Bar ..... *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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PARAGON PRINTING CO., LITTLE ROCK

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Constitutional Provisions Involved	2
Statement of the Case	3
Argument	5
Conclusion	8
Opinion of the Supreme Court of Arkansas (Appendix "A")	9
Appendix "B"	19

CITATIONS

Cases Cited

Duplex Printing Press Co. v. Deering, 254 U.S. 443, 465, 65 L. ed. 349, 356, 16 A.L.R. 196, 41 Sup. Ct. Rep. 175	5
Home Telegraph v. Los Angeles, 227 U.S. 278, 57 L. ed. 510	6
Lambert v. California, 355 U.S. 225, 2 L. ed. 228, 78 S. Ct. 240	6
Liggett Co. v. Baldridge, 278 U.S. 105, 73 L. ed. 204	5
Nashville, Chattanooga & St. Louis Railway v. Walters, 294 U.S. 405, 79 L. ed. 949, 55 S. Ct. 486	6
New State Ice Company v. Liebmann, 285 U.S. 261, 76 L. ed. 747	7
Saunders v. Shaw, 244 U.S. 317, 61 L. ed. 1163	6
Truax v. Corrigan, 275 U.S. 312, 327, 66 L. ed. 254, 260, 27 A.L.R. 375, 42 Sup. Ct. Rep. 124	5

Statutes

Arkansas Statutes 71-1301 et seq.	7
Arkansas Constitution, Amendment 28	2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. _____

SAM BLOCK, etc. ..... *Petitioners*

v.

ARKANSAS BAR ASSOCIATION, etc. ..... *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

Petitioners pray that a writ of certiorari issue to review the decision of the Supreme Court of Arkansas of April 27, 1959, and the order of the court denying rehearing June 1, 1959, which decision and order denying rehearing reversed the judgment of the Chancery Court of Pulaski County, Arkansas, entered January 13, 1958.

OPINIONS BELOW

The opinion of the Supreme Court of Arkansas sought to be reviewed here is officially reported in the Arkansas Law Reporter, Vol. 105, No. 2, dated April 27, 1959, at page 28. The opinion is set out as appendix "A" thereto. The order denying rehearing is set out as appendix "B".

JURISDICTION

The final judgment of the Supreme Court of Arkansas was entered on June 1, 1959 (R 71). The Supreme Court of Arkansas having assumed the right to appropriate to the exclusive use of the legal profession the exclusive right to prepare certain commercial instruments, in its original opinion, the unconstitutionality thereof was asserted in petitioners' petition for rehearing as is reflected by Record 58-67.

The jurisdiction of this Court is invoked under Title 28, U. S. Code Section 1257 (3).

QUESTION PRESENTED

Whether under a state constitutional provision authorizing the State Supreme Court to regulate the practice of law, the State Supreme Court may by judicial pronouncement appropriate to the exclusive use of the legal profession the right to prepare commercial instruments the preparation of which has historically been practiced by both lawyers and real estate men thus depriving the real estate profession of a necessary function in the reasonable and proper conduct of its business contrary to the provisions of Amendment Fourteen of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Amendment 14 to the Constitution of the United States and Amendment 28 of the Constitution of the State of Arkansas, the latter amendment being printed as appendix "C" to this petition.

STATEMENT OF THE CASE

In 1938, the people of the State of Arkansas adopted an amendment to the Constitution of Arkansas (Amendment 28) providing that "The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law". More than twenty years later the Supreme Court of Arkansas decided to interpret this language as giving it the power to designate which of the commercial activities connected with the real estate business constituted the practice of law and, after making such determination, to appropriate to the exclusive use of the lawyer these activities although they had been enjoyed and performed by the real estate profession for a great number of years and had become an integral and necessary part of the real estate business, a fact admitted by respondents and ignored by the Court. This case arose from a petition of the Arkansas Bar Association to the Pulaski Chancery Court for an injunction to prohibit certain real estate brokers (as a class) from continuing, as a part of their business, to prepare certain simple instruments by filling in blanks of standardized forms, some of which involved conveyancing and some of which did not. These activities were: Warranty Deeds; Disclaimer Deeds; Quitclaim Deeds; Joint Tenancy Deeds; Options; Easements; Loan Applications; Promissory Notes; Real Estate Mortgages; Deeds of Trust; Assignments of Leases or rentals; Contracts of Sale of Real Estate; Releases and Satisfactions of Real Estate Mortgage; Offers and Acceptances; Agreements for the sale of real estate; Bills of Sale; Contracts of Sale; Mortgages; Pledges of personal property; Notices and Declarations of Forfeiture; Notices requiring strict compliance; Releases and discharges of mechanic's and materialmen's liens; Printed forms approved by attorneys, including the various forms furnished by title insur-

ance companies to defendants for use by defendants as agents of title insurance companies; and Acting as closing agent for mortgage loan and completing by filling in the blanks therein with factual data such instruments as are furnished to them and are necessary and incidental and ancillary to the closing of the transaction between the mortgagee for whom they act as agent and the mortgagor; Leases.

The lower court dismissed the petition whereupon the Supreme Court by judicial fiat defined itself into jurisdiction and then defined the activities above enumerated as exclusively legal in nature and declared that they were within the exclusive province of the lawyer.

The Supreme Court having asserted this power of definition, selection and elimination in its opinion, the petitioners herein immediately filed a petition for rehearing in which they asserted that the powers so improperly assumed by the Supreme Court violated the Constitution of the United States, Amendment 14, and constituted a taking of the property rights of the petitioners and a partial destruction of their business contrary thereto. The petition for rehearing was denied. Until such time as the Arkansas Supreme Court assumed the power, without legislative act authorizing same, to make the determination complained of here, no Federal Constitutional question arose, but immediately and timely thereafter the Federal question was presented to the Arkansas Supreme Court which rejected same.

ARGUMENT

The practice of completing standardized forms of commercial instruments for use in the closing of real estate transactions by a real estate broker has by usage become an integral and important part of the real estate business. To some extent it involves conveyancing. It is also quite true that many of these instruments are contracts. The error reached by the Arkansas Supreme Court is in assuming that all conveyancing and the preparation of contracts is exclusively within the field of the lawyer. Stipulation 4 between the parties hereto agreed that:

> "The practice of completing printed forms of instruments incidental to the completion of real estate transactions in which a real estate broker has an interest as broker has been widespread and prevalent in the State of Arkansas for a number of years and is in practice now and the said real estate brokers intend to continue said practice in the future."

The question now arises, who has the paramount right to claim the privilege of using these standardized commercial forms by right or usage and custom — the lawyer or the real estate broker? It has become an integral part of the real estate broker's business, and as a part of his business is a right protected by the Constitution of the United States. Since the petitioner's business is a property right, the decisions of this Court make clear that it is entitled to protection against state action contrary to the Federal Constitution. *Liggett Co.* v. *Baldridge*, 278 U. S. 105, 73 L. ed. 204; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 465, 65 L. ed. 349, 356, 16 A.L.R. 196, 41 Sup. Ct. Rep. 172; *Truax* v. *Corrigan*, 257 U. S. 312, 327, 66 L. ed. 254, 260, 27 A.L.R. 375, 42 Sup. Ct. Rep. 124.

The severe injury to petitioner's business and property rights has arisen in this case by judicial decision rather than by state legislation, but this Court has made plain that the constitutional protection is effective as much against unconstitutional judicial decisions as against unconstitutional state legislation. This is particularly true of a judicial decision which has the effect of destroying vested rights, or of appropriating vested rights from one business and awarding these rights as the exclusive property to others in a different business. *Saunders* v. *Shaw*, 244 U. S. 317, 61 L. ed. 1163; *Home Telegraph* v. *Los Angeles*, 227 U. S. 278, 57 L. ed. 510.

This Court has many times recognized that a state's police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably. *Nashville, Chattanooga & St. Louis Railway* v. *Walters*, 294 U. S. 405, 79 L. ed. 949, 55 S. Ct. 486; and *Lambert* v. *California*, 355 U. S. 225, 2 L. ed. 228, 78 S. Ct. 240. The confiscation of a portion of petitioner's business here under consideration is sought to be justified by the Arkansas Supreme Court under the guise of the police power to protect the general public. It is quite true that the courts have the power to regulate the conduct of lawyers and to prescribe the qualifications of those who may appear before the courts as attorneys. In short, the courts may prescribe the qualifications and educational requirements of lawyers for the protection of the public, but we insist that this right to prescribe qualifications cannot be carried to the extreme of eliminating from the rightful use of other professions and occupations certain commercial activities simply by requiring a law license as a prerequisite to the right to engage in these activities. The requirement of a certain degree of proficiency and competency is one thing, but the limitation of the commercial activities of others

by requiring a law license as a standard of competency and proficiency to perform these acts is an entirely different matter. Real estate brokers are required by statute to be "competent to transact the business of real estate brokers", and they too must pass an examination to prove their competency and proficiency. Arkansas Statutes 71-1301, *et seq.* Under the decision of the Arkansas Supreme Court, regardless of the amount of education, competency and proficiency possessed by a real estate broker, still, in the absence of ownership of a license to practice law, he is prohibited from carrying on the enjoined activities although they are an essential part of his business. Certainly the State has the police power, but in the absence of specific legislation may a Court, under the guise of the police power, arbitrarily take a part of one business and award it to another? This Court has said no. *New State Ice Company* v. *Liebmann*, 285 U. S. 261, 76 L. ed. 747.

The decision of the Arkansas Supreme Court is obviously arbitrary in declaring by interpretation that a provision of the Arkansas Constitution giving it the power "to regulate the practice of law" also gives it the absolute power to classify commercial acts as the practice of law, which various commercial acts have long been performed by many occupations and branches of commerce. The capriciousness of the decision is further demonstrated by the inclusion by the Court of options, promissory notes, and loan applications in the prohibited instruments. We thus have included in the list of appropriated activities those which by no stretch of the imagination could be classed as within the exclusive field of the lawyer. If this decree of the Arkansas court is upheld as being outside constitutional protection, what is to prevent extending the decree further into the field of commerce so as to pro-

hibit the preparation of all commercial documents which would include all contracts such as installment purchase agreements, conditional sales agreements by furniture, automobile or jewelry companies, and many other similar agreements now in common use in retail selling?

CONCLUSION

For the foregoing reasons it is respectfully presented that substantial questions of constitutional consideration are involved. The issues are of wide public concern. For these reasons this petition for writ of certiorari should be granted.

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APPENDIX "A"

OPINION OF THE SUPREME COURT OF ARKANSAS

ARKANSAS BAR ASSOCIATION, *et al* v. SAM BLOCK, *et al*
1696

Opinion Delivered April 27, 1959

Appeal From Pulaski County Chancery Court, Second Division

Reversed

J. SEABORN HOLT, Associate Justice. This case involves the alleged unlawful practice of law by appellees, and others similarly situated, and comes to this court on the following agreed statement of facts:

"It is stipulated by and between the plaintiffs and the defendants in the above styled cause of action that the following facts shall be considered by the Court in determining the issues involved in this cause.

I

"The Bar Association of Arkansas is a voluntary, unincorporated association composed of lawyers comprising most of the practicing lawyers of the State of Arkansas. The plaintiffs have filed this action as officers of the Bar Association of Arkansas and individually as licensed attorneys of Arkansas. This is a class action on behalf of all the members of the State of Arkansas.

II

"This action was brought against the defendants as members of a class of real estate brokers and salesmen

licensed under the laws of the State of Arkansas, and is intended to apply equally to all members of said class and is not an individual action directed solely toward the defendants.

III

"The Arkansas Real Estate Association is a voluntary unincorporated association composed of persons engaged in the real estate business in the State of Arkansas and has intervened in this action as representatives of the class which it represents. The Pulaski County Bar Association is a voluntary unincorporated association composed of practicing lawyers in Pulaski County, Arkansas, and has intervened in this action as a class intervention in behalf of the class which it represents.

IV

"The Statutes of the State of Arkansas do not define the term 'practice of law'; however, they do provide that no person may practice law in the State of Arkansas without first having obtained a license to do so.

V

"The Statutes of the State of Arkansas provide that no person may engage in the real estate business in the State of Arkansas without having first obtained a license to do so under the real Estate License Law.

VI

"The practice of completing printed forms of instruments incidental to the completion of real estate transactions in which a real estate broker has an interest as broker has been widespread and prevalent in the State of Arkan-

sas for a number of years and is in practice now and the said real estate brokers intend to continue said practice in the future.

VII

"The real estate brokers, in transactions in which they act as brokers use standardized and approved prepared forms of instruments hereinafter listed, and complete them by filling in the blank spaces to show the real estate transaction.

"The said instruments are:

1. Warranty Deeds;
2. Disclaimer Deeds;
3. Quitclaim Deeds;
4. Joint Tenancy Deeds;
5. Options;
6. Easements;
7. Loan Applications;
8. Promissory Notes;
9. Real Estate Mortgages;
10. Deeds of Trust;
11. Assignments of leases;
12. Contracts of Sale of Real Estate;
13. Releases and Satisfactions of Real Estate Mortgages;
14. Offers and Acceptances;
15. Agreements for the sale of real estate;
16. Bills of Sale;
17. Contracts of Sale;

18. Mortgages;

19. Pledges of personal property;

20. Notices and Declarations of Forfeiture;

21. Notices requiring strict compliance;

22. Releases and discharges of mechanic's and materialmen's liens;

23. Printed forms approved by attorneys, including the various forms furnished by title insurance companies to defendants for use by defendants as agents of title insurance companies; and

24. Acting as closing agent for mortgage loans and completing by filling in the blanks therein with factual data such instruments as are furnished to them and are necessary and incidental and ancillary to the closing of the transaction between the mortgagee for whom they act as agent and the mortgagor.

25. Leases.

VIII

"The real estate broker receives a commission for his participation in the real estate transaction as real estate broker, but no separate charge is made by the real estate broker for the completion of the blank forms of instruments which he prepares in the closing of a real estate transaction in which he is participating as broker.

IX

"The forms used by the defendants have been previously approved by attorneys and have been previously prepared, save for the blank spaces remaining thereon, which the defendants complete as above set out. The selection of the type of instrument form to be used in the

closing of the transaction is made by the broker from information elicited from the other parties to the transaction and in accordance with their desires.

"In selecting the type of form to be used in any transaction, the real estate broker consults with the other parties to the transaction and follows their expressed desire as to the kind of transfer, terms, duration of payment, interest, etc.

X

"The defendants prepare no instruments in transactions in which they are not interested parties as brokers and do not claim the right to prepare instruments or complete printed forms of instruments for other parties where they are strangers to the transaction.

XI

"The defendants do not render opinions as to titles, nor the condition of titles of the properties which are involved in the transaction, but refer the other parties to the transaction to their respective attorneys in the event a question of title is raised".

On a hearing, the trial court held that the activities of appellees in preparing the various instruments above listed "as an incident to real estate transactions which they are handling" did not constitute the practice of law in Arkansas. We have concluded that in so holding the court erred. Simplified, the question presented is whether the admitted activities of appellees constitute the practice of law. We hold that such activities do constitute the practice of law as to every one of the instruments itemized above except as to No. 14, that of "Offers and Acceptances". It is undisputed that the appellees here are either persons who are not licensed in Arkansas to practice

law directly or through employees who are lawyers. Research of authorities by able counsel and by this court has failed to turn up any clear, comprehensible definition of what really constitutes the practice of law. Courts are not in agreement. "We believe it is impossible to frame any comprehensive definition of what constitutes the practice of law. Each case must be decided upon its own particular facts. The practice of law is difficult to define. Perhaps it does not admit of exact definition." *Rhode Island Bar Association* v. *Automobile Service Association* (1935), 55 R. I. 122, 100 A.L.R. 226.

The Supreme Court of Errors of Connecticut, in an opinion (April 15, 1958), in the case of *State Bar Association of Connecticut, et al* v. *The Connecticut Bank and Trust Company*, 145 Conn. 222, 140 A. 2d 863, which we think sound and well reasoned, used this language: "The practice of law is open only to individuals proved to the satisfaction of the court to possess sufficient general knowledge and adequate special qualifications as to learning in the law, and to be of good moral character. A dual trust is imposed on attorneys at law. They must act with fidelity, both to the courts and to their clients. They are bound by canons of ethics which are enforced by the courts. The relation of an attorney to his client is preeminently confidential. It demands on the part of the attorney undivided allegiance, a conspicuous degree of faithfulness and disinterestedness, absolute integrity and utter renunciation of every personal advantage conflicting in any way, directly or indirectly, with the interest of his client. Only a human being can conform to these exacting requirements. Artificial creations, such as corporations or associations, cannot meet these prerequisites and, therefore, cannot engage in the practice of law. The practice of law consists in no small part of work performed outside of any court

and having no immediate relation to proceedings in court. It embraces the giving of legal advice on a large variety of subjects and the preparation of legal instruments covering an extensive field. Although such transactions may have no direct connection with court proceedings, they are always subject to subsequent involvement in litigation. They require in many aspects a high degree of legal skill and great capacity for adaptation to difficult and complex situations. No valid distinction can be drawn between the part of the work of the lawyer which involves appearance in court and the part which involves advice and the drafting of instruments. The work of the office lawyer has profound effect on the whole scheme of the administration of justice. It is performed with the possibility of litigation in mind, and otherwise would hardly be needed. It is of importance to the welfare of the public that these manifold customary functions be performed by persons possessed of adequate learning and skill and of sound moral character, acting at all times under the heavy trust obligation to clients which rests upon all attorneys. The underlying reasons which prevent corporations and associations, as well as individuals other than members of the Bar, from appearing before the courts apply with equal force to the performance of these customary functions of attorneys and counsellors at law outside of the courts", in re *Opinion of the Justices*, 289 Mass. 607, 613, 194 N. E. 313.

It is obvious therefore that the practice of law is not confined to services by a licensed attorney in a court of justice, but also includes any services of a legal nature rendered outside of courts and unrelated to matters pending in the courts. In Re *Duncan*, 83 S. Ct. 186, 65 S. E. 210, the Supreme Court of South Carolina said: "It is too obvious for discussion that the practice of law is not limited to the conduct of cases in court. According to the generally understood definition of the practice of law in

this country, it embraces the preparation of pleadings and other papers incident to actions and proceedings on behalf of clients before judges and courts and in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients and all action taken for them in matters connected with the law. An attorney at law is one who engages in any of these branches of the practice of law."

It seems to us that since the greater part of a lawyer's work is performed in his office, it is certainly most important that such office work be performed by persons trained in the law and subject to court discipline. The hazards to the public are reduced to a minimum in court proceedings "where the proceedings are public and the presiding officer is generally a man of judgment and experience. * * * Not so, in the office. Here the client is with his attorney alone, without the impartial supervision of the judge. Ignorance and stupidity may here create damage which the courts of the land cannot undo", *People* v. *Alfani* (1919), 227 N. Y. 334, 125 N. E. 671.

The Supreme Court of Illinois in the case of *People* v. *Peoples Stockyards State Bank* (1931), 344 Ill. 462, 176 N. E. 901, expressed a similar view in this language: "It is just as essential to the administration of justice and the proper protection of society that unlicensed individuals should not be permitted to prey upon the public in that sphere (office practice) of the practice of law as it is with respect to proceedings in the courts. It is no less an usurpation of the functions and privileges of an attorney and an affront to the court having sole power to license attorneys, for one not licensed as such to perform the services of an attorney outside of court procedures."

The Supreme Court of Washington in the case of *Washington State Bar Association* v. *Washington Association of Realtors* (Wash. 1953) 41 Wash. 2d 697, 251 P. 2d 619, used this language: " * * * Any legal form must be adapted skillfully to the transaction for which it is used, so that it expresses the agreement of the parties and defines their rights and obligations. Doing this is work of a legal nature and, when it is done by one unqualified, we not only cannot condone its continuance, but we must act to prevent it, whether or not it is done for compensation," and in the case of *People* v. *Schafek* (1949), 404 Ill. 45, 87 N. E. 2d 773, the Supreme Court of Illinois said: "With reference to preparing deeds, notes, mortgages and contracts in real estate transactions, respondent seems to consider those acts as being more or less mechanical and routine, requiring no legal knowledge or skill. Many titles are complex and complicated. They have grown more so from time to time and will not likely become less complex in the future. Those who prepare instruments which affect titles to real estate have many points to consider. A transaction which at first seems simple may upon investigation be found to be quite involved. One who merely fills in certain blanks when other pertinent information should be elicited and considered is rendering little service, but is acting in a manner calculated to produce trouble. When filling in blanks as directed, he may not by that simple act be practicing law, but if he elicits the proper information and considers it, and advises and acts thereon, he would in all probability be practicing law. In other words, if his service does not amount to the practice of law, it is without material value; but if it is of material value, it would likely amount to the practice of law. The public should be protected from falling into the hands of one not skilled in the laws of conveyancing when seeking advice or service having to do with real estate titles."

As indicated, we hold that the preparation of any of the instruments here involved, or any other instruments involving real property rights for others, either with or without pay, save and except instrument No. 14 above, constitutes the practice of law in this state. Obviously instruments of "Offers and Acceptances" contemplate the subsequent preparation of a deed to the property involved, and possible related instruments such as mortgages, leases, easements, etc., to complete the transaction which, we hold, only a licensed lawyer equipped with requisite legal training, knowledge and skill could prepare.

Accordingly, the decree is reversed with directions to enter a decree consistent with this opinion.

IN THE SUPREME COURT OF ARKANSAS

NOVEMBER TERM 1958

Proceedings of April 27, 1959

ARKANSAS BAR ASSOCIATION v. SAM BLOCK, *et al*

JUDGMENT

This cause came on to be heard upon the transcript of the record of the chancery court of Pulaski County, Second Division, and was argued by solicitors; on consideration whereof it is the opinion of the Court that there is error in the proceedings and decree of said chancery court in this cause, in this: The court erred in holding that the activities of the appellees in preparing various instruments relating to real estate transactions except as to No. 14, that of "Offers and Acceptances", did not constitute the practice of law.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, for the error aforesaid, reversed, annulled and set aside with costs; and that this cause be remanded to said chancery court with directions to enter a decree consistent with the opinion herein delivered.

It is further ordered and decreed that said appellants recover of said appellees all their costs in this Court, in this cause expended, and have execution thereof.

April 27, 1959

APPENDIX "B"

IN THE SUPREME COURT OF ARKANSAS

MAY TERM 1959

Proceedings of June 1, 1959

ARKANSAS BAR ASSOCIATION, *et al* ..... *Appellants*

v. No. 5—1696

SAM. BLOCK, *et al* ..... *Appellees*

ORDER

Rehearing denied.

June 1, 1959

APPENDIX "C"

No. 28. REGULATING PRACTICE OF LAW

SUPREME COURT — RULE MAKING POWER. — The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 280

SAM BLOCK; LEWIS BLOCK and RAYMOND BLOCK, a co-partnership, d b a BLOCK REALTY COMPANY, FAUSETT AND COMPANY, an Arkansas Corporation, and WALTHOUR-FLAKE COMPANY, an Arkansas Corporation ..... *Petitioners*

v.

BAR ASSOCIATION OF ARKANSAS, by EUGENE A. MATTHEWS and H. MAURICE MITCHELL, Acting President and Secretary-Treasurer thereof, and individually as licensed attorneys at law of the Arkansas Bar; TERRELL MARSHALL, THOMAS E. SPARKS, COOPER JACOWAY, JOHN H. JONES, FRANK J. WILLS, BILL PENIX, JOHN T. JERNIGAN, W. H. DUNBLASIER and OSBORNE W. GARVIN, as Members of the Committee of the Bar Association of Arkansas on Unauthorized Practice of Law, and individually as licensed attorneys at law of the Arkansas Bar ..... *Respondents*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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INDEX

	Page
Questions Presented	1
Argument	3
Conclusion	5
Appendix A	7
Appendix B	8

CITATIONS

Cases Cited

Bachtel v. Wilson, 204 U. S. 36, 51 L. ed. 357	5
Bailey v. Anderson, 326 U. S. 203, 90 L. ed. 3	5
Bradwell v. State of Illinois, 83 U. S. 130, 21 L. ed. 442	3
Chronister v. Skidmore, 129 S.W. 2d 608, 198 Ark. 261	4
Depew v. Wichita Association of Credit Men, 142 Kan. 403, 49 P. 2d 1041, certiorari denied	3
Erie R. Co. v. Tompkins, 304 U. S. 64, 82 L. ed. 1188	4
Ginsburg v. Kovrak, 392 Pa. 143, 139 A. 2d 889	3
Hanson v. Grattan, 84 Kan. 843, 115 P. 646, 34 L.R.A. (NS) 240	3
Hubert v. Chicago, 202 U. S. 275, 50 L. ed. 1026	4
Klaxon Co. v. Stentor Electric Manufacturing Companies, 61 S. Ct. 1020, 313 U. S. 487, 85 L. ed. 1115	4
In Re Lockwood, 154 U. S. 116, 38 L. ed. 929	3

INDEX—(Continued)

	Page
Murphy *v.* Murphy, 140 S.W. 2d 416, 200 Ark. 458	4
Mutual Life Insurance Company *v.* McGrew, 183 U. S. 291, 47 L. ed. 480	5
Rhode Island Bar Association *v.* Automobile Service Association, 55 R.I. 122, 178 A. 139, 100 A.L.R. 226	3
Stembridge *v.* Georgia, 343 U. S. 541, 96 L. ed. 1130	5
Vanderbark *v.* Owen-Illinois Glass Company, 61 S. Ct. 347, 311 U. S. 538, 85 L. ed. 327	4
Vincennes Steel Corporation *v.* Derrybery, 106 S.W. 2d 571, 194 Ark. 375	4
West *v.* American Telephone & Telegraph Company, 61 S. Ct. 179, 311 U. S. 223, 85 L. ed. 139	4
Wichita Association of Credit Men *v.* Depew, 56 S. Ct. 574, 297 U. S. 710, 80 L. ed. 997	3
In Re: Yeiser, 110 Neb. 65, 192 N.W. 953	3
Yeiser *v.* Dysart, 45 S. Ct. 399, 267 U.S. 540, 60 L. ed. 775	3

STATUTES

Appendix A

Arkansas Statutes (1947), Sec. 25-205	7

Appendix B

Arkansas Statutes (1947), Sec. 25-101	8
Arkansas Statutes (1947), Sec. 25-103	8

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 280

SAM BLOCK, ET AL *Petitioners*

v.

ARKANSAS BAR ASSOCIATION, ET AL *Respondents*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

Respondents take the position that the petition for writ of certiorari should not be granted for the reasons that: (1) the record does not present any substantial federal question; (2) the judgment was on an adequate non-federal basis; and (3) the constitutional question was raised for the first time in the petition for rehearing in the state supreme court.

QUESTIONS PRESENTED

Contrary to the statement of petitioners that the question presented was whether, "under a state constitutional provision authorizing the state supreme court to regulate the practice of law, the state supreme court may, by judicial pronouncement, appropriate to the exclusive use of the legal profession the right to prepare commercial instruments, the preparation of which has historically been practiced by both lawyers and real estate men", the record will disclose that notwithstanding the authority granted to the supreme court by Amendment 28 to the Constitution of the State of Arkansas, the genesis of this suit was not at the instance of the Supreme Court of the State.

The suit was instituted by members of the State Bar for a declaratory judgment for the purpose of having a determination of whether the activities of the real estate brokers, petitioners here, constituted the practice of law, and if so, to have such activities enjoined.

Such activities were admitted by stipulation and made a part of the record in the cause and hence, no facts being in dispute, it became a question of law whether such activities constituted the practice of law. The learned trial court held that such activities did not amount to the practice of law and upon review of this finding by the Supreme Court of Arkansas, that finding was reversed, it being held by the appellate court that such activities did constitute the practice of law, and it is from this judgment that petitioners seek the writ of certiorari.

ARGUMENT

I

No Substantial Federal Question Is Presented

The practice of law is not a profession open to all who wish to engage in it, nor is it a natural, inherent or vested right, or one guaranteed by the Constitution; it is a personal right or privilege, limited to persons of good moral character, with special qualifications, duly ascertained and certified, *Hanson* v. *Grattan*, 84 Kan. 843, 115 P. 646, 34 L.R.A. (NS) 240; *Rhode Island Bar Association* v. *Automobile Service Association*, 55 R. I. 122, 179 A. 139, 100 A.L.R. 226; *Bradwell* v. *State of Illinois*, 83 U. S. 130, 21 L. ed. 442; *In Re*: *Lockwood*, 154 U. S. 116, 38 L. ed. 929; and statutory provisions which prescribe certain qualifications for persons desiring to engage in the practice of a profession are not void as a grant of special privileges or immunities. *Depew* v. *Wichita Association of Credit Men*, 142 Kan. 403, 49 P. 2d 1041, certiorari denied, *Wichita Association of Credit Men* v. *Depew*, 56 S. Ct. 574, 297 U. S. 710, 80 L. ed. 997; *Ginsburg* v. *Kovrak*, 392 Pa. 143, 139 A. 2d 889.

Since the right to practice law is not a natural or constitutional right, the state may attach such conditions to the licensing of persons to practice law as it deems necessary for the protection of the public. *Yeiser* v. *Dysart*, 45 S. Ct. 399, 267 U. S. 540, 69 L. ed. 775, affirming *In Re*: *Yeiser*, 110 Neb. 65, 192 N.W. 953.

It thus appears that no substantial federal question is involved, in denying the petitioners the right to practice law where admittedly their qualifications had not been ascertained and certified, as provided for by the applicable state statutes.

II

The Judgment of the State Court Was Based on Non-Federal Grounds

The sole question involved in the case at bar is whether the admitted activities of the petitioners constituted the practice of law. A determination of this question involved no federal question and the findings of the State court on non-federal grounds is binding on this Court. *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 82 L. ed. 1188. Federal courts are bound by the law of the state as declared by its decisions as to any substantive matter and the duty to follow state decisions is not confined to matters involving local rules. *Klaxon Co.* v. *Stentor Electric Manufacturing Companies*, 61 S. Ct. 1020, 313 U. S. 487, 85 L. ed. 1115; *Vandenbark* v. *Owen-Illinois Glass Company*, 61 S. Ct. 347, 311 U. S. 538, 85 L. ed. 327; *West* v. *American Telephone & Telegraph Company*, 61 S. Ct. 179, 311 U. S. 223, 85 L. ed. 139.

III

The Question Was Not Timely Raised

The question was presented to the state court for the first time in the petition for rehearing in the Supreme Court of Arkansas. Although petitioners could have, in the trial court, pleaded the protection of the Fourteenth Amendment and had a review of that question in the state supreme court, they did not do so, and under the rules of state procedure, the state supreme court will not review questions presented for the first time in a petition for rehearing. *Vincennes Steel Corporation* v. *Derrybery*, 196 S.W. 2d 571, 194 Ark. 375; *Chronister* v. *Skidmore*, 129 S.W. 2d 608, 198 Ark. 261; *Murphy* v. *Murphy*, 140 S.W. 2d, 416, 200 Ark. 458, and this Court will not entertain jurisdiction where the federal question was not timely raised under state procedure. *Hulbert* v. *Chicago*, 202 U. S. 275,

50 L. ed. 1026, and this is true, even though the state court is completely silent on the federal question, *Mutual Life Insurance Company* v. *McGrew*, 188 U. S. 291, 47 L. ed. 480, as in the case at bar. See *Bailey* v. *Anderson*, 326 U. S. 203, 90 L. ed. 3; *Stembridge* v. *Georgia*, 343 U. S. 541, 96 L. ed. 1130; *Bachtel* v. *Wilson*, 204 U. S. 36, 51 L. ed. 357.

CONCLUSION

The record in this case discloses that two of petitioners, viz. Fausett & Company and Walthour-Flake Company, are Arkansas corporations, and the other petitioner is a co-partnership. Corporations in Arkansas are prohibited by statute from practicing law (see Appendix A) and individuals of the age of twenty-one years and of good moral character may practice only if they possess the requisite qualifications of learning and ability (Appendix B). So, under the laws of the State of Arkansas, the corporate petitioners could not be licensed to practice law under any circumstances, and it is admitted that the individuals had not proven their qualifications and had not been admitted to practice, and there was no contention by the petitioners in the trial court or in the state appellate court that they were entitled to practice law, the contention being that the admitted practices did not constitute the practice of law. The determination of this question by the state supreme court involved no federal question of any kind or character.

For this reason and for the further reason that the question was not raised until the petition for rehearing in the state supreme court, the petition for a writ of certiorari to the state supreme court should be denied.

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APPENDIX A

Arkansas Statutes (1947), Sec. 25-205. It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney at law for any person in any court in this State or before any judicial body, or to make it a business to practice as an attorney at law for any person in any of said courts or to hold itself out to the public as being entitled to practice law, or to tender or furnish legal services or advice, or to furnish attorneys or counsel, or to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume or advertise the title of lawyer or attorney, or attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law, or to furnish legal advice, service or counsel, or to advertise that either alone or together, with or by or through any person, whether a duly and regularly admitted attorney at law, or not, it has, owns, conducts or maintains a law office or any office for the practice of law, or for furnishing legal advice, services or counsel.

APPENDIX B

Arkansas Statutes (1947), Sec. 25-101. Every citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, may upon application, and in the manner hereinafter provided, be admitted to practice as an attorney and counselor at law in the courts of this state • • •.

Arkansas Statutes (1947), Sec. 25-103. Every applicant for admission to practice law in the courts of this state shall be examined pursuant to rules of the Supreme Court of this State and shall, before his or her admission, produce to the court, by sworn petition, satisfactory proof of the foregoing qualifications • • •.